

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

DONALD COLUMBUS REED	§	
v.	§	CIVIL ACTION NO. 5:06cv74
NANCY TALLEY, ET AL.	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Donald Reed, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On August 16, 2006, the Magistrate Judge ordered Reed to pay an initial partial filing fee of \$13.00, pursuant to 28 U.S.C. §1915(b). When Reed did not comply, the Magistrate Judge issued a Report on October 23, 2006, recommending that the lawsuit be dismissed without prejudice for failure to prosecute or to obey an order of the Court.

Reed filed objections to the Magistrate Judge's Report on November 3, 2006. In his objections, Reed asked that he be allowed to continue with his lawsuit and said that he would have a relative bring the fee to the Court. On December 12, 2006, the Magistrate Judge issued an order noting that the fee had not yet been paid and setting a deadline of December 27, 2006, for such payment to be made. As of the present time, the Magistrate Judge's order for a partial fee, which was entered in August, still has not been complied with, nor has Reed shown good cause for this failure. Reed has failed to prosecute his lawsuit.

As the Magistrate Judge observed, the incidents forming the basis of the lawsuit took place in February of 2005. At this stage of the proceeding, therefore, dismissal without prejudice could work as a dismissal with prejudice because of the operation of the statute of limitations. Accordingly, the Magistrate Judge's Report will be modified so as to provide that the statute of limitations will be suspended for a period of 60 days following entry of final judgment.

The Court has conducted a careful *de novo* review of the pleadings and documents in this case, including the Plaintiff's complaint, the Report of the Magistrate Judge, the Plaintiff's objections thereto, and all other pleadings, documents, and records in the case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice for failure to prosecute or to obey an order of the Court. It is further

ORDERED that the statute of limitations on the claims in this lawsuit is hereby SUSPENDED from the date of filing of this lawsuit until sixty (60) days following the date of entry of final judgment in this case. See Mills v. Criminal District Court No. 3, 837 F.2d 677 (5th Cir. 1988); Rodriguez v. Holmes, 963 F.2d 799 (5th Cir. 1992). Finally, it is hereby

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this 22nd day of January, 2007.

A handwritten signature in black ink, appearing to read "David Folsom", is written over a horizontal line.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE